



Paper No. 6

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OCT 28 2002

In re Application of :
Stephenson, et al. :
Application No. 10/039,296 : DECISION REFUSING OFFICE OF PETITIONS
Filed: October 19, 2001 : STATUS UNDER 37 CFR
Atty. Dkt. No.: 054998/0002 : 1.47(a)
Title: NON-VOLATILE MAGNETIC :
MEMORY DEVICE :

This decision is in response to the petition under 37 CFR 1.47(a), filed September 13, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed October 19, 2001 without an executed oath or declaration and naming James Stephenson, Bruce Shipley, and Dan Carothers as joint inventors. Accordingly, a Notice to File Missing Parts of Nonprovisional Application was mailed February 14, 2002 requiring, among other items, an executed oath or declaration and a surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings); (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The instant petition lacks item (1) set forth above. Petitioner has failed to establish that the inventors received the application papers (specification, claims, drawings, and oath or declaration) and thereafter refused to execute the oath or declaration.

The declaration of Manoj Punit indicates that on May 17, 2002, the inventors were sent a Declaration and Power of Attorney and an Assignment for execution. Declarant states the refusal of inventor James Stephenson to execute the declaration was expressed in a letter from the inventor's legal representative. Declarant also indicates that inventor Dan Carothers indicated an intent to sign the declaration but to date no executed declaration has been received.

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Petitioner is reminded that before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that a *bona fide* effort has been made to present a complete copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventors. Petitioner has presented no evidence that the non-signing inventors were ever presented with a complete copy of the application papers (specification, claims, drawings, oath or declaration) for the instant application.

Any renewed petition should be accompanied by evidence to sufficiently establish that the non-signing inventors were sent a complete copy of the application papers and thereafter refused to execute the declaration. A copy of the application papers should be sent to the last known address of the non-signing inventors, or, if the non-signing inventors are represented by counsel, to the address of the non-signing inventors' attorney. Petitioner may wish to provide the Office copies of letters sent to the inventor indicating the enclosure of the application papers (specification, claims, drawings, and oath or declaration). If after the inventors receive the application papers and requests to execute the oath or declaration are refused, these facts should be set forth in a statement of facts signed by the person to whom the refusals were made and detailing with specificity the exact manner of the refusals. If a written refusal has been made, a copy of the written refusal should be included on renewed petition.

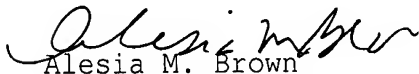
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn.: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
2201 S. Clark Place
Arlington, VA

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0310.



Alesia M. Brown
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Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy